IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 4023 of 2007()

AGAINST THE ORDER DATED 29/10/2007 IN CRMP.895/07 IN CC.3/2001 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM

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REVN. PETITIONER: PETITIONER/ACCUSED:

NATARAJA AIYER, DY.MANAGER (REFINERY CO-ORDINATION), INDIAN OIL CORPORATION LTD. ERNAKULAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: RESPONDENTS/COMPLAINANAT & STATE:

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1. CENTRAL BUREAU OF INVESTIGATION, KERALA BRANCH, COCHIN.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR
SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 13/11/2007, ALONG WITH CRRP NO. 4024 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. Nos. 4023 and 4024 OF 2007

Dated this the 13th day of November, 2007

O R D E R

The common petitioner in these two revision petitions is the first accused(Nataraja Aiyer) in C.C.No.3/2001 on the file of the Special Judge(SPE/CBI)-II, Ernakulam. He challenges the common order dated 29.10.2007 passed by the Special Judge (SPE/CBI)-II, Ernakulam in Crl.M.P.Nos.894/07 and 895/07 in C.C.No.3/2001.

2. The case was investigated by the CBI which filed the final report originally against 8 accused persons. Three among the 8 accused persons were made approvers of whom one died and two survived. The court below took cognizance of the offences against the surviving 5 accused persons and registered the case as C.C.No.3/2001.

3. The case of the prosecution can be summarised as follows:-

The first accused(revision petitioner) was the Deputy Manager, Refinery Co-ordination in-charge of South Tanker berth at Ernakulam during the period from January to May, 2000. He

entered into a criminal conspiracy with the other accused for the purpose of committing theft and misappropriation of high speed diesel oil discharged from the tanker ships to the IOC, BPC, HPC, etc. In prosecution of the common object of the said criminal conspiracy, A1, A2 and A5 during the intervening night of 22/23.4.2000, 15/16.5.2000 and 28/29.5.2000 dishonestly diverted high speed diesel oil from south tanker berth to the IOC jetty and illegally loaded 1,10,000 litres high speed diesel oil in a Dolphin barge owned by A2 and A5 and conveyed the same to Bava Enterprises, a petrol pump owned by A3 and A4 and located at Thoppumpady. The accused thus made wrongful gain to themselves and caused wrongful loss to the oil companies. The accused have thereby committed an offence under section 13(1)(c) of the Prevention of Corruption Act, 1988 and punishable under sections 13(2) of the Prevention of Corruption Act, 1988 and sections 409 and 411 read with section 120B IPC.

4. On the side of the prosecution 52 witnesses were examined. After the close of the prosecution evidence, the accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them

in the evidence for the prosecution. They denied those circumstances and maintained their innocence. The case was thereafter posted for defence evidence. On the side of the revision petitioner he cited 3 witnesses. The first witness E.K.Venugopal is a retired Senior Refinery Co-ordinator of Indian Oil Corporation, Ambalamugal. In fact, he was prosecution charge witness No.55 who was given up by the prosecution. He was cited to speak about the discharge programme and co-ordination work carried out by the IOC at the tanker jetty. The 2nd witness was the Superintendent of Central Excise and Customs(Petroleum Wing), Ernakulam. He was cited to speak about the statements in AR-3A Forms submitted by various oil companies specifying the particulars of oil receipt. The 3rd witness was one C.M.Chandrakanthan, Chief Terminal Manager, Indian Oil Corporation, Trichy to speak about the role of Port Co-ordinator at the tanker jetty and also about the enquiry conducted by the IOC with respect to the alleged incident. The petition filed by the revision petitioner before the court below to summon the aforesaid 3 witnesses was Crl.M.P.No.895/07. The revision petitioner had also filed Crl.M.P.No.894/07 seeking to summon two documents.

The first document was AR-3A Forms submitted by the respective oil companies specifying the particulars of oil receipt during the period from January to October 2000. It was to prove those Forms that the second witness was cited. The other document which was sought to be summoned was the file maintained by the CJM, Ernakulam as C1-3307/01 in RC 7/A/2000 of CBI and in the custody of the Sheristadar of the CJM Court, Ernakulam to prove the mode of recording the 164 statements of the approvers. According to the revision petitioner, sufficient safeguards were not taken before the 164 statements of those approvers were recorded and the Magistrate who recorded the 164 statements when examined before court was not able to confirm or deny whether the statements were recorded consecutively after giving them sufficient time for reflection.

5. The aforesaid applications filed by the revision petitioner were opposed by the CBI and the court below as per the common order dated 29.10.2007 permitted examination of the 3rd witness only but refused examination of the first two defence witnesses. The court below also dismissed Crl.M.P.No.894/07 for summoning the aforesaid two documents. It is the said common

order which assailed in these revisions.

6. I heard Advocate Sri.S.Gopakumaran Nair, the learned counsel appearing for the revision petitioner and Advocate Sri.S.Sreekumar, the learned standing counsel for the CBI.

7. Sri.S.Sreekumar, the learned standing counsel appearing for the CBI, made the following submissions before me in support of the impugned order:-

The purpose of examining the two other witnesses and summoning the said documents was only to protract the trial of the case. The prosecution has already examined witnesses to speak about the discharge programme and co-ordination work carried on by the IOC at the tanker jetty and the examination of the first defence witness will only lead to duplication of evidence. The AR-3A Forms submitted by the respective oil companies giving particulars of oil supply is also unnecessary. The administration file maintained by the CJM, Ernakulam with regard to the procedure followed by the Magistrate while recording the 164 statements of the approvers also cannot be summoned since the Magistrate has already testified before court. There is also the presumption under section 80 of the Evidence Act with regard to

the same.

8. After hearing both sides and after perusing the impugned order, I do not think that the examination of the three witnesses cited by the revision petitioner is totally irrelevant to the fact in issue before the court below. The revision petitioner has a contention that he was in charge of the refinery co-ordination of the discharge operations of IOC only and that he had no role to play in the discharge of high speed diesel oil to BPC, HPC, etc. It was this aspect of the matter that is sought to be proved by the first defence witness. The second witness cited is for proving AR-3A Forms and according to the revision petitioner, none of the oil companies had complained of short delivery of high speed diesel oil and this is sought to be proved by the second witness for whose examination the first set of documents made mention of in Crl.M.P.No.894/07 is to be necessarily summoned. The second document, namely the file pertaining to the 164 examination of the approvers, also can be pressed into service by the revision petitioner to substantiate his contention that the approvers were not given sufficient time for reflection. The question as to whether they were given time for reflection and if not, what is the probative

value of their statement, etc. are matters for the trial court to consider after the trial is over. At any rate, there is no justification to shut out evidence as proposed by the revision petitioner. Accordingly, Crl.M.P.No.894/07 will stand allowed in toto and Crl.M.P.No.895/07 will stand allowed in respect of defence witness Nos.1 and 2. I am told that the 3rd witness cited by the revision petitioner is scheduled for examination today and he shall be examined without undue delay. I am also told that the first and second witnesses cited by the revision petitioner are both local witnesses easily available for examination. Those two witnesses shall be summoned and examined without unnecessary delay. The defence evidence of the revision petitioner shall be concluded within three weeks of commencement of the examination of the first defence witness.

In the result, these revisions are allowed as above.

(V. RAMKUMAR, JUDGE)

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